

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-535

JAMES F. BEWLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 3, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR-05-1241]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant James Franklin Bewley received a two-year suspended imposition of sentence for aggravated assault. On January 23, 2008, Bewley’s suspended sentence was revoked, and he was sentenced to six years’ imprisonment in the Arkansas Department of Correction. Bewley appeals the revocation, arguing that there is insufficient evidence to warrant revocation. We affirm.

To revoke a suspended sentence, the burden is on the State to prove, by a preponderance of the evidence, the violation of a condition of the suspended sentence. Ark. Code Ann. § 5-4-309(d) (Repl. 1993). On appellate review, the trial court’s findings will be upheld unless they are clearly against a preponderance of the evidence. *Lemons v. State*, 310 Ark. 381, 836 S.W.2d 861 (1992). Because the burdens are different, evidence that might be insufficient for a criminal conviction may be sufficient for revocation of a suspended sentence. *Id.* Because determination of a preponderance of the evidence turns on questions of credibility

and weight to be given testimony, we defer to the trial judge's superior position. *Id.* Further, in order to revoke a suspended sentence, the State need only prove one violation, *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005), and we view the evidence supporting the alleged violation in the light most favorable to the State. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003).

In its petition for revocation, the State alleged that Bewley had failed to pay his fines and court costs and had committed the offense of breaking or entering. At the hearing, the State introduced a court-cost ledger sheet indicating that Bewley had failed to make his required payments. Additionally, Lawrence Sanford testified that he observed Bewley attempting to enter the Rooster's Club in Fort Smith, Arkansas, carrying a red bag. Sanford also recalled seeing Bewley walking in the parking lot of the club, by parked vehicles. Shannon Pulliam testified that he saw Bewley in the back of Sanford's truck and yelled at him. According to Pulliam, at this point, Bewley fell out of the truck, tipped over some boards, and "took off" running with a maroon bag. Sanford testified that he then went to his truck and noticed that his tool-storage bin was opened and his Ryobi drill was missing.

According to Sanford's testimony, at this point, he drove his truck, saw Bewley nearby, told him that he was missing a tool, and confronted Bewley about being near the truck earlier in the evening. Sanford also prevented Bewley from leaving the area. At 4:54 a.m., Fort Smith Police Officer Daniel Grubb arrived on the scene. Grubb testified that he observed the two men by the truck, with a red bag at their feet. Sanford waved to get Grubb's attention and pulled Bewley by the shirt toward him. Grubb saw the Ryobi drill, a couple of unopened

beers, and a pair of glasses in the bag. Grubb retrieved the drill from the bag and returned it to Sanford.

Viewing these facts in the light most favorable to the State, as we are required to do, the preponderance of the evidence supports the revocation on two grounds—failure to pay costs and breaking or entering. Proof on either ground is sufficient to support the revocation. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003). As such, the court’s revocation of Bewley’s suspended sentence is not clearly erroneous.

Affirmed.

GLADWIN and HUNT, JJ., agree.